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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,848	12/20/2001	John William Tobin	F6145(C)	2553

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UNILEVER INTELLECTUAL PROPERTY GROUP
700 SYLVAN AVENUE,
BLDG C2 SOUTH
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Am

Office Action Summary	Application No. 10/027,848	Applicant(s) TOBIN, JOHN WILLIAM	
	Examiner Anthony Weier	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4, 7-9, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 7-9, 22, and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. Claims 1, 2, 4, 7, 9, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Anson (U.S. Patent No. 5584229)

The claims stand rejected for the reasons set forth in the last Office Action.

Claim Rejections - 35 USC § 103

2. Claims 1, 2, 4, 7, 9, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anson (U.S. Patent No. 5584229)

The claims stand rejected for the reasons set forth in the last Office Action.

3. Claims 1, 2, 9, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwald et al (2002/0130137).

The claims stand rejected for the reasons set forth in the last Office Action.

4. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwald et al (2002/0130137).

The claims stand rejected for the reasons set forth in the last Office Action.

5. Claims 1, 4-9, and 22 are rejected under 35 USC 103(a) as being unpatentable over Cornelius taken with Greenwald (U.S. Patent Application Publication 200/0130137) or with Kappenberg and Greenwald (U.S. Patent Application Publication 200/0130137).

The claims stand rejected for the reasons set forth in the last Office Action.

6. Claim 8 is rejected under 35 USC 103(a) as being unpatentable over any one of Anson, Greenwald et al, Cornelius taken alone or Cornelius with Kappenberg and wherein same is further taken together with either one of JP 4-45748 or Weisberg et al.

The claims stand rejected for the reasons set forth in the last Office Action.

7. Claims 2 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwald et al further in view of Anson et al (U.S. Patent No. 4920871).

The claims stand rejected for the reasons set forth in the last Office Action.

Response to Arguments

8. Applicant's arguments filed 11/14/05 have been fully considered but they are not persuasive.

Applicant argues that Anson provides no heating means used in contact to heat a beverage extract to produce a heated beverage extract. It should be noted, however, that this is not specifically called for in the instant claims. Step (b) in claim 1, for example, calls for simply mixing the heated beverage extract with a heated solvent to produce a beverage on demand. Although it is noted that the second reservoir of Anson supplies a solvent (water) that is intended to cool the coffee extract while combining (i.e. mixing) with same, the solvent itself has been previously heated (i.e. 100 F) which meets the requirement of step (b). With regard to step A of instant claim 1, it should be further noted that the water from the first reservoir is expected to heat at least a portion of the previously formed coffee extract there within in the brew chamber 26 to a temperature within the range called for (e.g. the vicinity of 200 F) before same has had the chance to escape through the filter. In other words, the follow-up solvent from the first reservoir acts as the heating step as called for in instant claim 1.

Applicant argues that Greenwald et al does not teach heating a beverage extract by using a heating means placed within the beverage extract. Examiner disagrees. Figure 4 discloses the inside set up for the "cold reservoir" wherein a heating element (43) is present within said reservoir and would be in direct contact with the contents of said reservoir. Although this is considered the cooling reservoir, the heating element is contained therein to maintain the contents therein at a certain temperature which would

mean heating same. As addressed in the rejection above, that temperature can be 168 F which falls within the range called for in the instant claims (see paragraph 39 of Greenwald et al). This temperature is the coolest temperature of a conventional dispensing beverage temperature range for coffee shops in general. Elsewhere in Greenwald et al it is disclosed that the contents of the "cold reservoir" must be "less than or equal to the lowest temperature at which it would be desired to dispense the beverage". Although 120-130 F is considered the preferred such temperature, Greenwald et al discloses that same may be higher as desired (Paragraph 107). Since the study cited in Paragraph 39 discloses a preferred lower dispensing range of 168 F, it would have been obvious to one having ordinary skill in the art at the time of the invention to have adopted such temperature as a matter of preference within the range of dispensing temperatures disclosed in the prior art.

Applicant further argues with regard to Greenwald et al that the beverage held in the cooled reservoir is not a beverage extract precursor to be treated with a solvent to create a beverage on demand. However, the contents held in the "cooled reservoir" are a form of beverage extract and not yet the "beverage on demand" until combined with further solvent (e.g. hotter extract) from the "hot reservoir."

Applicant argues the heating structure 31 of Figure 3 does not provide for the metal or pipe heating means placed within the beverage extract as called for in the instant claims. It should be noted that Greenwald et al discloses the general heating means within the reservoir which is not in the form of a pipe or rod. Nevertheless, the concept of heating using a cylinder shape is well known and other passages of

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Greenwald are cited for teaching same. It is not seen nor has it been shown that the particular form of heating element would make for a patentable distinction within the instant *method* claims. Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed said rod or pipe of Greenwald et al (31) as a conventional alternative to employing the spiral structure of 43 for heating liquids within said reservoir.

Applicant argues that Cornelius does not disclose a beverage extract being heated with a heating means that is either heated with an electrical current or a heated solvent and placed in contact with the beverage extract. This has already been addressed in the rejection above. In summary, Cornelius is silent as to how such heating of the extract occurs (14). Nevertheless, Greenwald et al teaches heating by a method of heating means within an extract itself (as well as the pipe/rod embodiment as previously explained). It would have been obvious to have employed such heating method as a matter of preference among conventional heating methods known in the art. Kappenberg was applied for further teaching the known approach of heating coffee extract and to do so to a temperature of 90 C within the range as called for in the instant claims.

Applicant argues that JP 4-45748 and Weisberg et al do not teach the process of preparing a beverage which is translucent and does not comprise particles of extract and, furthermore, do not teach heating means that is in direct contact with the extract. It should be noted that JP 4-45748 and Weisberg et al were not applied for teaching the heating means in direct contact with the extract. However, JP 4-45748 and Weisberg et

al were applied for teaching the known processing steps of providing a coffee product that is translucent and not comprising particles of extract as set forth (with motivation) as set forth in the rejection above. It should be noted that if Applicant is implying that such translucence and freedom of particles is due to the heating means in direct contact with the extract, this nexus is not articulated in the instant claims. In fact, it is not set forth how or when such translucent and particle freedom are achieved in the process but just that the product simply possesses such characteristics.

All other arguments have been addressed in view of the rejections as set forth above.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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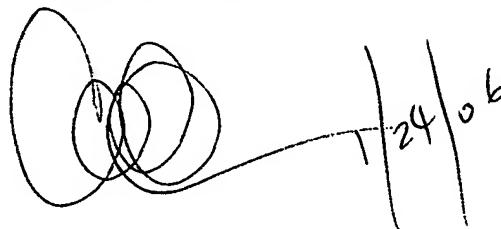
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
January 24, 2006

A handwritten signature consisting of several overlapping loops, followed by a vertical line and the date "1/24/06".